IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8344 of 1997
With
SPECIAL CIVIL APPLICATION No. 5670 of 1998
With
SPECIAL CIVIL APPLICATION No. 5671 of 1998
With
SPECIAL CIVIL APPLICATION No. 5675 of 1998
With
SPECIAL CIVIL APPLICATION No. 4701 of 1998
With
SPECIAL CIVIL APPLICATION No. 6922 of 1998

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DV SHAH & 9 - Petitioner(s)
Versus
AMC & 7 - Respondent(s)

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Appearance :

MR GM JOSHI for Petitioner(s) : 1 – 10 in SCA No. 8344 of 1997

MR. Mukul Sinha, for Mr. M.C. Bhatt for petitioners in SCAs No. 5670, 5671, and 5675 of 1998.
RULE SERVED for Respondent(s) : 2,
MR SANDIP C SHAH for petitioners in SCA No. 4701 of 1998

Mr. NR SAHANI for petitioners in SCA No. 6922 of 1998
Mr. S.N. Shelat,Sr. Advocate with Mr. HS Munshaw, Mr. Prakash K. Jani for Mr. Mukund Desai, Mr. Sandip C. Shah etc. for respondents.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/06/2007

C.A.V.

As common question of law and facts arise in this group of petitions and they are interconnected, they are being disposed of by this common judgment and order;

1. Special Civil Application No. 8344 of 1997 is filed by the respective petitioners who were at the relevant time working as Assistant City Engineers in Ahmedabad Municipal Corporation [hereinafter referred to as “AMC”] for an appropriate writ, direction or order quashing and setting aside the action of the respondent Corporation in issuing public advertisement dated 10th July 1997 and passing subsequent Resolution No. 997 dated 28th October 1997. It is also further prayed to quash and set aside the appointment of private respondents. It is also further prayed for an appropriate order restraining the General Body of the Corporation from approving the Standing Committee Resolution No. 997 dated 28th October 1997 and if such

resolution is passed the same may be quashed and set aside. It is also further prayed for an appropriate order or direction restraining the respondent Corporation from making any appointment from the waiting list to any vacancy in respect of which no decision is taken by the Standing Committee. By way of amendment, the petitioners also prayed for an appropriate writ, order or direction quashing and setting aside the resolution of the Standing Committee of AMC appointing respondents No. 6, 7 and 8 and also to quash and set aside the consequential orders of appointment issued in their favour. While admitting the said Special Civil Application, the learned Single Judge has granted interim relief directing that appointment of the concerned respondents as 'Deputy City Engineer' shall be ad-hoc and subject to the result of the present petition.

2. Special Civil Application No. 4701 of 1998 is also filed by the Assistant City Engineers working in the AMC for an appropriate

writ, direction or order quashing and setting aside the impugned Resolution No. 159 dated 15.5.1998 of the Standing Committee of AMC and consequently to set aside the appointment of respondents No. 5 to 10 of the present Special Civil Application on the post of Deputy Engineer. It is also further prayed for an appropriate writ, direction or order directing the respondents to operate the Resolution No. 997 dated 28.10.1997 also of Standing Committee of the AMC and to appoint the petitioners on the post of Deputy Engineer in AMC. It is also further prayed for an appropriate writ, direction or order restraining the General Board of the Corporation from approving the Standing Committee Resolution No. 159 dated 15.5.1998. It is to be noted that while admitting the present Special Civil Application the learned Single Judge granted ad-interim relief directing that the impugned resolution dated 15.5.1998 of the Standing Committee of AMC shall not be taken up for confirmation by the General Board of the Municipal Corporation and the said interim relief

has been continued till final disposal and the respondents were directed to maintain status-quo which has also been continued.

3. Special Civil Applications No. 5670 of 1998, 5671 of 1998 and 5675 of 1998 are filed by the respective petitioners who are/were working as Assistant City Engineers in AMC for an appropriate writ, direction or order quashing and setting aside the impugned resolution passed by the General Board of AMC dated 20.11.1997 as well as the Resolution dated 15.5.1998 passed by the Standing Committee of the AMC by further directing the AMC to operate the select list prepared by the Standing Committee of the AMC dated 28.10.1997 with retrospective effect and to quash and set aside the appointments of respondents No. 4 to 9 as Deputy City Engineers.

4. Special Civil Application No. 6922 of 1998 is filed by the petitioner who was at the relevant time working as In-charge City Deputy Engineer with the AMC for a declaration that all

the vacancies advertised vide Annexure A for the post of Deputy City Engineers are required to be filled-in on the basis of the list prepared by the Staff Selection Committee as reflected in Annexure B and that the Standing Committee has no power to depart from or modify the list prepared by the Selection Committee and further directing the respondent No.1 AMC to operate the said list in terms of the said declaration. It is also further prayed for an appropriate writ, direction or order quashing and setting aside the 2nd and 3rd lists prepared by the Standing Committee on 28.10.1997 and 15.5.1998.

5. At the outset, it is required to be noted that in all these petitions the dispute is with regard to appointment to the post of Deputy City Engineers in AMC. The hierarchy of the posts in Engineering Department of AMC is as under;

(1) Assistant Engineer;

(2) Assistant City Engineer;

(3) Deputy City Engineer;

(4) Additional City Engineer;

(5) City Engineer;

(6) Deputy Municipal Commissioner (Engineering).

The post of Deputy City Engineer was initially filled-in by promotion from the cadre of Assistant City Engineer but subsequently the policy was changed in the year 1985 and it was decided to fill-up 33% posts of Deputy City Engineers by direct recruitment and 67% posts by way of promotion from the post of Assistant City Engineers.

6. The facts and chronological events leading to the present Special Civil Applications in nutshell are as under;

An advertisement was issued in 'Sandesh' daily on 10th July 1994 inviting applications for preparation of Select List + Wait List for six posts of Deputy City Engineer out of which two were reserved for Scheduled Tribes ('ST') and three were reserved for Socially and

Educationally Backward Class ('SEBC') and one for General Category. That as all the employees of the Corporation were also entitled to apply and to be appointed as direct recruits, all the petitioners applied for being recruited directly to the post of Deputy City Engineer. Pursuant to the said advertisement, 127 applications were received and 99 candidates were called for interviews. It appears that the Committee consisting of Municipal Commissioner, Deputy Municipal Commissioner (Engineering), City Engineer and Chief Auditor held interviews, out of which 89 candidates remained present. That the Municipal Commissioner prepared a list on the basis of the said interviews wherein only one candidate, i.e., Solanki Kishanlal Jayantilal (SEBC) was recommended for appointment vide proposal dated 8th September 1997 and prepared the waiting list of 11 persons for the posts which were to be fallen vacant in future on the post of Deputy City Engineers on further promotion from the post of Deputy City Engineers to Additional City Engineers. It is also required to be noted

that the Municipal Corporation also recommended that only one candidate belonging to ST has applied, however at the time of interview his performance was found not satisfactory and was not found suitable for the said post and therefore it was recommended that the efforts to get the candidates belonging to ST community be continued and till then the candidates from the waiting list should be appointed on purely ad-hoc and temporary basis. That said recommendation dated 8th September 1997 of the Municipal Commissioner was submitted before the Standing Committee of AMC for its consideration and for further forwarding it to the Corporation. The Standing Committee again interviewed all the candidates and by Resolution No. 997 dated 28.10.1997 prepared a list wherein 3 employees/candidates namely (1) Limbachia Vinod Parshottambhai (SC/ST); (2) Mahida Rashmikant Philipbhai (General category); and (3) Shah Vijay Bapalal Shah (General category) were recommended for appointment on one year probation while names of six candidates, i.e., (1) Shah Mukesh

Chinubhai; (2) Gor Dhilipbhai Shantilal; (3) Arora Dilipkumar Trilokchand; (4) Acharya Prakash Hiralal; (5) Prajapati Suresh Prabhudas; and (6) Parekh Vijay Chandulal were recommended for keeping in waiting list for 2 years subject to approval of the Municipal Corporation. That the Resolution No. 997 dated 28.10.1997 of the Standing Committee of the AMC was placed before the General Board of the AMC and General Board of the AMC did not approve of the selection made by the Standing Committee and remanded the matter to the Standing Committee for reconsideration by passing a one line resolution that the said work is sent back for reconsideration of the Standing Committee. That thereafter after a period of more than six months the Standing Committee in its meeting held on 15.5.1998 reconsidered the proposal and prepared altogether a fresh select list and made a proposal for selection of six candidates whose names are mentioned as under for one year probation and 3 candidates in waiting list;

1. Modi Mukesh Kantilal (SEBC);

2. Mahida Rashmikant Philipbhai;

3. Vijay Bapalal Shah;

4. Vashrambhai Harjibhai Patel;

5. Dilipkumar Trilokchand Arora;

6. Patel Anand Bavabhai.

The said Resolution dated 15.5.98 recommending to appoint aforesaid 6 candidates as Deputy City Engineers on one year probation was subject to approval of the AMC (General Board of the AMC) and with a further condition that appointments of candidates at Serial No. 3 to 6 were on condition that as and when the candidates belonging to ST and SEBC categories are available they are to be relieved. Inspite of the aforesaid resolution and the conditions and even before the said resolution is placed before the General Board of the AMC for its consideration/approval, on the same day i.e., 15.5.1998 itself at around 8.00 p.m. appointment orders came to be issued to the aforesaid 6 candidates who immediately resumed their duties. At that stage and before the

resolution dated 15.5.1998 could be placed before the General Board of the AMC for its approval the petitioners have preferred the present Special Civil Applications and prayed for the aforesaid reliefs and in some of the matters this Court granted interim relief directing the respondents to maintain status-quo and not to place the resolution dated 15.5.1998 before the General Board for its approval/consideration. As stated above, by interim order appointments of concerned respondents on the post of Deputy City Engineer are directed to be ad-hoc and subject to the result of SCA No. 8344/97. As stated above in SCA No. 8344/97 the respective petitioners had challenged the resolution of the Standing Committee dated 9.9.97/28.10.97 as well as subsequent resolution dated 15.5.98 of the Standing Committee of the AMC on the basis of which private respondents are appointed on the post of Deputy City Engineers. In SCA No. 4701/98 the petitioner belonging to SEBC category has challenged the resolution No. 159 of the Standing Committee of the AMC dated 15.5.98 and

to operate resolution No. 997 dated 28.10.97. In SCAs. No. 5670/98, 5671/98 and 5675/98, respective petitioners have prayed to quash and set aside the resolution passed by the General Board dated 28.11.97 and also the resolution passed by the Standing Committee of the AMC dated 15.5.98 and to operate the select lists prepared/recommended by the Standing Committee vide resolution No. 997 dated 28.10.1997. Thus it appears that in some of the petitions the prayer is to operate the resolution No. 997 of the Standing Committee dated 28.10.1997 and in some petitions the prayer it to make appointment on the basis of the recommendation by the Municipal Commissioner dated 8th September 1997. However, in all these petitions the resolution of the standing committee dated 15th May 1998 by which the private respondents are appointed on the post of Deputy City Engineers is under challenge.

7. Shri GM Joshi, learned advocate has appeared on behalf of the petitioners of Special

Civil Application No. 8344 of 1997; Shri Mukul Sinha, learned advocate has appeared for Shri MC Bhatt, learned advocate appearing on behalf of the petitioners of Special Civil Applications No. 5670 of 1998, 5671 of 1998 and 5675 of 1998; Shri Sandip Shah, learned advocate appeared on behalf of the petitioners in Special Civil Application No. 4701 of 1998; and Shri NR Sahani, learned advocate appeared on behalf of the petitioner of Special Civil Application No. 6922 of 1998. Shri SN Shelat, learned Senior Advocate appeared with Shri HS Munshaw, learned advocate on behalf of Ahmedabad Municipal Corporation and Shri Prakash K. Jani, learned advocate appeared on behalf of one of the appointees, i.e., Deputy City Engineer who is appointed pursuant to the Resolution dated 15th May 1998 of the Standing Committee of the AMC.

8. Shri GM Joshi, learned advocate for petitioners of Special Civil Application No. 8344 of 1997 has submitted that the advertisement was issued on 10th July 1997 inviting applications for

six posts of Deputy City Engineers, out of which two posts were reserved for ST candidates; three were reserved for SEBC candidates; and one for General category candidates. He has further submitted that the said advertisement was for preparation of Select list-cum-Wait list and 3 posts were to be filled in on regular basis and 3 names were to be placed in the Wait List. It is submitted that instead of doing so the Corporation has appointed candidates belonging to General Category against the posts reserved for ST and SEBC and that too by operating the Wait List which is absolutely illegal. It is also further submitted by him that after the applications were invited the Committee consisting of Municipal Commissioner, Deputy Municipal Commissioner (Engineer), City Engineer and Chief Auditor held the interviews and prepared the Select Lists and the same though not permissible was sent to the Standing Committee for its approval; the Standing Committee held fresh interviews of all the candidates and prepared another Select List which was not

approved by the General Board; again after a period of six months the Standing Committee prepared altogether a new Select List by Resolution dated 15.5.1998; though it was subject to the approval of the General Board of the Corporation and the appointments were to be made on one year probation till candidates belonging to ST and SEBC candidates are available, without waiting for approval of the General Board all of a sudden surreptitiously appointments were made on 15th May 1998 by issuing appointment orders at 8.00 p.m. whereby private respondents came to be appointed. It is submitted that the Resolutions of the Standing Committee are absolutely illegal and it is requested that appointments should be made on the basis of the recommendations of the Municipal Commissioner on the basis of the interviews held on 1st and 2nd September 1997. It is also submitted by Shri Joshi, learned advocate appearing for respective petitioners of SCA No. 8344/97 that the first affidavit on behalf of the Municipal Corporation dated 22nd January 1998 is absolutely misleading and in fact further

affidavit-in-reply was required to be filed by the Corporation explaining about the earlier affidavit and just a contrary stand has been taken in the 2nd reply. He has also further submitted that as such considering the provisions of the BPMC Act the resolutions passed by the Standing Committee are absolutely illegal and contrary to the provisions of the Statute. Therefore it is requested to allow the present Special Civil Applications.

8.1. Learned advocate appearing on behalf of respective petitioners of other Special Civil Applications have adopted the submissions made on behalf of the petitioners of Special Civil Application No. 834 of 1997 insofar as they relate to jurisdiction of the Standing Committee for making appointment on the post of Deputy City Engineers as also with respect to legality and validity of the resolutions passed by the Standing Committee of the AMC by which the private respondents are appointed on the post of

the Deputy City Engineers on the basis of the resolution dated 15th May 1998.

9. Shri SN Shelat, learned Senior Advocate appearing on behalf of the Corporation has submitted that the appointments and the Resolution dated 15th May 1998 of the Standing Committee of the AMC were subject to approval of the General Board of the Corporation, and before the said resolution could be placed before the General Board for consideration the petitioners have approached before this Court by way of these Special Civil Applications and in view of the interim order passed by this Court the General Board could not consider the said list. Thus, the present Special Civil Applications are premature. It is further submitted that since there was a time-gap between the recommendation made by the Municipal Commissioner and the reconsideration of the resolution by the Standing Committee on 15th May 1998 it was found that there were six vacancies which existed and therefore

the recommendations were made by the Standing Committee for appointment against those vacancies and the Standing Committee also recommended that against the reserved posts of ST and SEBC fresh attempts should be made by releasing advertisements. He has further submitted that out of the six candidates who were appointed on the post of Deputy City Engineers on the basis of the resolution of the Standing Committee dated 15th May 1998, Modi Mukesh Kantilal has retired on 30th September 2002 after acceptance of resignation under VRS and another candidate, namely Vijay Bapalal Shah has retired on 30th September, 2006. He has also further submitted that during the pendency of the present Special Civil Application another candidate who was appointed pursuant to the resolution of the Standing Committee dated 15th May 1998, i.e., Mahida Rashmikant Philipbhai is at present appointed as 'Additional City Engineer' through direct recruitment and so far as other candidates who are appointed pursuant to the resolution of the Standing Committee dated 15th May 1998, i.e.,

Vashrambhai Harjibhai Patel; Dilipkumar Trilokchand Arora; and Patel Anand Bavabhai are concerned they are at present holding the post of Additional City Engineer by promotion from the post of Deputy City Engineer. Shri Shelat, learned Senior Advocate has further submitted that as such the Corporation is the competent authority to make appointment to the post of Deputy City Engineer and at the instance of the petitioners the Corporation is prevented from considering the list prepared by the Standing Committee. It is submitted by him that considering the decision of the Division Bench of this Court in the case of (***Dr.) R.R. Shah Vs. Municipal Commissioner, Ahmedabad and Others,*** reported in ***1993(1) GLH Page 339***, if it is held that the Standing Committee was not justified in making the recommendation for appointment, in that case the Corporation be directed to consider the recommendation of the Municipal Commissioner and be directed to make its own decision in accordance with law within specified period and until then the appointment of the respondent be

continued as ad-hoc as they have been occupying the post since last several years and are qualified also. It is submitted by him that if the respondents are directed to be reverted irrespective of further consideration by the AMC, the administration will suffer great inconvenience. Shri Shelat has relied upon one order passed by the Hon'ble Supreme Court dated 3rd December 1999 in Civil Appeal No. 6966 of 1999 between ***Municipal Commissioner for City of Ahmedabad and Another Vs. Sansare P. Dattaram & Ors.,*** whereunder with regard to the post of Assistant Municipal Commissioner the appointment was found to be illegal, the Hon'ble Supreme Court directed the Corporation to complete the exercise of filling up the vacancy of Assistant Municipal Commissioner in accordance with the rules applicable for appointment to that post within a period of two months and during the said period the candidate who was appointed on the post of Assistant Municipal Commissioner and whose appointment was found to be illegal and dehors the rules was allowed to function as

Assistant Commissioner subject to the result of fresh selection. Therefore it is requested to continue the private respondents as 'ad-hoc' appointees till a fresh decision is taken by the Corporation considering the recommendation of the Municipal Commissioner.

9.1. Shri PK Jani, learned advocate appearing on behalf of one of the selectees/appointees has tried to support the action of the respondents in appointing him on the post of Deputy City Engineer by submitting that as the respondents No. 7 and 8 who are at present working on promotion to the post of Additional City Engineer may not be disturbed.

10. Heard the learned advocates appearing on behalf of the respective parties and also considered the Written Submissions submitted on behalf of the petitioners of Special Civil Application No. 8344 of 1997 as well as the Written Submission on behalf of respondent No.1,

AMC.

11. The dispute is with regard to the post of Deputy City Engineer in AMC. At the relevant time the scale of pay of the Deputy City Engineer was Rs. 3000-4500.

12. Before considering the facts of the present cases and considering the controversy in the present Special Civil Applications certain statutory provisions with regard to appointment are required to be referred to. Section 53 of The Bombay Provincial Municipal Corporations Act, 1949, ['the BPMC Act' for short] provides for power of appointment in whom to vest. In Section 53 of the BPMC Act, the Legislature has created three hierarchial levels for vesting of power for makign appointments to different posts in the Corporation. Under sub-section (1) the power of making appointments to all posts carrying pay-scale in cases of certain specified amount vest in the Corporation. So far as the post of

Deputy City Engineer is concerned, considering the pay-scale carried with the said post the power of appointments to the said posts vest in the Corporation. Section 54 of the BPMC Act provides for manner of making appointments. However in view of the fact that Section 54 of the Act would be applicable with regard to all the appointments in the municipal service other than appointments referred to in sub-section (1) of Section 53, Section 54 of the Act would not be applicable with regard to the post of Deputy City Engineer. Chapter III provides for method of appointment of certain municipal officers. It reads as under;

> **“1. Manner of making appointments._** Save in the case of temporary appointments made under sub-section (7) of section 45 and in the case of acting appointments made under section 58 no person shall be appointed to any of the posts the power of appointment to which vests in the Corporation unless he possesses

the qualifications prescribed in this behalf under rule 3.

2. Before making an appointment to any post referred to in rule 1 applications shall be invited for such post by advertisement in the local newspapers and the applications received shall be scrutinised by the Commissioner who shall submit to the Corporation, through a committee if so required by the Corporation, a list arranged in order of preference of such persons out of those who have applied as he considers qualified for the post :

Provided that, if the Corporation is of the opinion that any officer in municipal service possessing the qualifications prescribed under rule 3 is a fit person to be appointed to the post, it may appoint such officer to the post without following the procedure prescribed in this rule.

3. Subject to the provisions of this Act, the Corporation shall

> from time to time prescribe the qualifications required for each post, the power of appointment to which vests in the Corporation, with the approval of the [State] Government who may, in granting such approval, make such modifications in, or addition to, the qualifications prescribed by the Corporation as it deems fit.
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> 4. In the case of appointments made by any authority other than the Corporation no person shall be appointed except in a temporary or provisional capacity for a period not exceeding six months, unless he possesses the qualifications specified in the regulations."

13. Considering Section 53 read with Chapter III, applications were invited by the Municipal Commissioner of AMC by giving advertisement in local newspaper 'Sandesh' on 10th July 1997 for the post of Deputy City Engineer and for preparation of Select List plus Wait List, and

out of six posts for which applications were invited, two posts were reserved for ST candidates; three posts were reserved for SEBC candidates; and one post for General Category candidates. In the 1st Affidavit-in-Reply filed by the AMC dated 27th January 1998 it is the case of the AMC that there were 9 vacancies in the cadre of Deputy City Engineer carrying pay-scale of Rs.3000-4500 and out of the said 9 vacancies, 6 posts were to be filled up by promotion of the existing employees of the Corporation working n the cadre of Assistant City Engineer while 3 posts were to be filled up by direct recruitment. It is also further submitted in the said Reply that an advertisement was published in the newspapers for filling-up the said 3 posts of Deputy City Engineer by way of direct recruitment. It is also further submitted in the said reply that only 3 posts were to be filled up and the advertisement was for preparing select list for 3 posts as well as wait list for 3 posts and as per the Roster System posts No. 1 and 2

were to be filled up from ST candidates while post No.3 was to be filled up from SEBC candidates. The Municipal Commissioner received in all 167 applications, the same were scrutinised by him and the Municipal Commissioner invited 98 candidates who were found to be qualified for the post in the interviews held on 1st September 1997 and 2nd September 1997. It is also stated in the said reply that the said interviews were held by the Municipal Commissioner and he was assisted by the Deputy Municipal Commissioner (Engineering), City Engineer and Municipal Chief Auditor. The Municipal Commissioner prepared and forwarded the Select List as well as the Waiting List to the Standing Committee. The Standing Committee did not agree with the Select List/Waiting List submitted by the Municipal Commissioner and the Standing Committee held interviews of 86 candidates on 11th September 1997, prepared the select list as well as the waiting list and passed a resolution No. 997 dated 28th October

1997 which was sent to the Corporation (General Board of AMC). The General Board did not approve the said select list and referred the matter back to the Standing Committee and after 6 months the Standing Committee prepared another select list by resolution dated 15th May 1998 and recommended the names of the private respondents herein subject to approval by the General Board and on probation period of one year and till the ST and SEBC candidates are available. On the very same day, i.e., on 15th May 1998 without even waiting for the approval of the General Board/Corporation appointment orders came to be issued at 8.00 p.m., i.e., after the office hours and all the private respondents resumed the duties as Deputy City Engineers. The first illegality was committed on 15th May 1998 itself inasmuch as the appointment orders could not have been issued on 15th May 1998 itself when the select list/waiting list/recommendations were subject to the approval by the General Board of the Corporation. Now, considering the statutory provisions referred to

hereinabove the foremost and important question which is required to be considered is whether the Standing Committee was having any jurisdiction and/or authority to prepare the select list/waiting list and the Commissioner could have issued appointment orders on the basis of the select list/waiting list prepared by the Standing Committee. Admittedly, considering Section 53 of the BPMC Act, the power to make appointment on the post of Deputy City Engineer vests in the Corporation. As per Chapter III, before making any appointment, applications are required to be invited through advertisement in the local newspapers and the applications received shall be scrutinised by the Commissioner who shall submit to the Corporation, through a committee if so required by the Corporation, a list arranged in order of preference of such persons out of those who have applied as he considers qualified for the post. It appears that accordingly the Municipal Commissioner who had received 116 applications scrutinized the same and invited 98

candidates who were qualified for the post in the interviews held on 1st September 1997 and 2nd September 1997 and the said interviews were held by the committee consisting of the Municipal Commissioner, Deputy Municipal Commissioner (Engineering), City Engineer and Municipal Chief Auditor. The Municipal Commissioner accordingly prepared and forwarded the select list as well as waiting list to the Standing Committee which under the law he was not supposed to send to the Standing Committee. Now, in backdrop of the factual scenario what is required to be considered is whether the Standing Committee of the Corporation who has prepared the select list/waiting list initially vide resolution No. 997 dated 28th October 1997 and the subsequent resolution dated 15th May 1998 was having any jurisdiction and/or authority for preparation of a select list/waiting list and for recommending the names for the post of Deputy City Engineer. An identical question came to be considered by the Division Bench of this Court in the case of

(***Dr.) R.R. Shah Vs. Municipal Commissioner, Ahmedabad and Others,*** reported in ***1993(1) GLH Page 339,*** and the Division Bench considering the powers of the Standing Committee and in light of the relevant provisions of the BPMC Act, viz., Sections 53 and 54 of the Act, has held that the Corporation has no power to delegate the function of appointments on the post which vests in the Corporation to the Commissioner or to the Standing Committee. Considering Chapter III, it is also further held by the Division Bench that even a Committee is to be appointed only if the Corporation so requires and the committee is to prepare a list of candidates in order of preference and the Commissioner is to submit the said list to the Corporation and the recommendations so made by the Commissioner can never said to be binding to the Corporation. It is also observed by the Division Bench that if such recommendation is to be binding, it would amount to re-writing the provisions of S. 53(1) of the Act and also the provisions of R.2. It is observed by the Division Bench that the result of

such re-writing would be that the powers of appointment would vest in the Municipal Commissioner or in the Selection Committee appointed by the Standing Committee, and such interpretation which runs counter to the provisions of the Act and the Rules cannot be adopted.

14. Now, considering the Judgment of the Division Bench of this Court in the case of Dr. R.R. Shah (supra) and the facts of the present case, the power to make appointment on the post of Deputy City Engineer vests in the Corporation and considering Chapter III read with Sec. 53 of the Act the Commissioner was required to invite applications and the Commissioner and/or the Committee was required to prepare a list of candidates in the order of preference, and the Commissioner was required to submit the said list to the Corporation. The Division Bench in the aforesaid case has also drawn the distinction between preparation of list in order of preference and preparation of list in the order

of merits. The Division Bench has observed that preparation of list in order of preference only means that the candidates to be included in the list are eligible and all of them are suitable for the posts. It is also further observed in the said decision that when the question of preparation of list in order of merit arises, the list so prepared indicates that the person, whose name is at Serial No.1 tops the list and he is superior amongst all and in the same way Sr. No.2 stands just below Sr. No.1 and so on. It is further observed that the list prepared in the order of merit indicates some thing more than eligibility. It is also further observed by the Division Bench that the essential distinction being that the case of preparation of list in order of merit, the element of evaluation enters in the mind of the authority or the person preparing the list while in case of preparation of list in order of preference this would ordinarily be absent. The relevant Para 10 of the said decision is reproduced as under;

10. Again it may be noted that the

Commissioner could have submitted a list arranged in order of preference. In the instant case, the list prepared by the Selection Committee was not in order of preference. It was in order of merits. Merit was not to be decided by the Commissioner or by the committee appointed by the Standing Committee. The decision as regards merit is required to be taken by the Corporation itself. It is the function of the Corporation to evaluate the relative merits of the candidates. To arrange the order of merit was not the function of the committee or that of the Commissioner. Therefore, the exercise taken by the Commissioner and the Standing Committee appointed by the Standing Committee was not in accordance with the provisions of the Act and the Rules. Again it may be noted that the preparation of list in order of preference only means that the candidates to be included in the list are eligible and all of them are suitable for the post. However, other things being equal, if question arise of giving preference, the order of preference

should be as indicated in the list. When the question of preparing a list in order of merit arises, the list so prepared indicates that the person, whose name is at Sr. No.1 tops the list and he is superior among all. In the same way, Sr. No.2 stands just below Sr.No.1 and so on. The list prepared on the basis of merit indicates something more than eligibility. The essential distinction being that in case of preparation of list in order of merit, the element of evaluation enters in the mind of the authority or the person preparing the list while in case of preparation of list in order of preference, this would ordinarily be absent. Such list would prima facie indicate that all are equal and eligible. Evaluation of merit is to be done by some other authority. The list so prepared only indicates that all the candidates included in the list are eligible and suitable for the post. The preference indicated may not be necessarily on the basis of merits after evaluation of relative merits of the candidate concerned. “

14.1. Now, considering the decision of the Division Bench, the following scenario emerges.

(1) The power to appoint on the post as per Section 53(1) of the Act vests in the Corporation;

(2) The Corporation has no power to delegate such function to the Commissioner or to the Standing Committee;

(3) The Commissioner and/or the Committee is to prepare a list of candidates in the order of preference;

(4) The Commissioner is to submit the said list to the Corporation;

(5) The recommendation so made by the Commissioner is not binding to the Corporation and the select list/waiting list is to be prepared by the Corporation in order of merits on

evaluation of merit to be made by the Corporation;

14.2. In the present case as stated above, after the applications were invited and received by the Commissioner the interviews were conducted by the Committee headed by Commissioner and they prepared the select list and wait list which as per the judgment of the Division Bench in the case of *Dr. R.R. Shah (supra)* is not permissible. The Commissioner was not required to prepare the select list and/or wait list by conducting interviews. He was required to prepare the list of candidates in order of preference and was required to submit the said list to the Corporation. Therefore first illegality was committed at that stage. Thereafter the select list/wait list prepared by the Commissioner was sent to the Standing Committee for its consideration and approval which is also not permissible as per the above Division Bench judgment. The Commissioner was required to submit the list to the Corporation and there is

no provision of sending the list to the Standing Committee for its approval/consideration. Thus, the second illegality has been committed at that stage. That thereafter the Resolution Mo. 997 dated 28th October 1997 was sent to the Corporation and the General Board did not approve the list prepared by Resolution No. 997 and sent back the matter to the Standing Committee. The Corporation was not required to refer the matter to the Standing Committee and the Corporation was required to prepare the select list/waiting list in the order of merits itself. Thus, the third illegality was committed at that stage. That thereafter, the Standing Committee again passed a resolution after a period of 6 months vide resolution dated 15th May 1998 and prepared a fresh select list/waiting list and recommended the names of the candidates who are already appointed and the Commissioner issued appointment orders on the basis of such select list/waiting list and appointed the private respondents herein whose appointments as Deputy City Engineers are under challenge in the present Special Civil

Applications. Thus, again the illegality has been committed by the Standing Committee while passing the resolution dated 15th May 1998, and a further illegality came to be committed by the Commissioner in issuing appointment orders to the private respondents herein whose appointments are under challenge, and in issuing appointment orders without even waiting for the approval of the Corporation on the basis of the select list/waiting list and the recommendations made by the Standing Committee made by Resolution dated 15th May 1998. Now, considering the judgment of the Division Bench of this Court in the case of Dr. R.R. Shah (supra) and the facts stated hereinabove, the select list/waiting list prepared by the Municipal Commissioner on the basis of the interviews conducted on 1st September 1997 and 2nd September 1997; the Resolution of the Standing Committee No. 997 dated 28th October 1997 [preparation of Select List/Waiting List by the Standing Committee]; the Resolution of General Board being Resolution No. 829 dated 28th November 1997 [referring the matter back to the Standing

Committee for reconsideration]; the Resolution of the Standing Committee dated 15th May 1998, i.e., preparation of fresh select list/waiting list; and consequently the appointments of the private respondents herein to the post of Deputy City Engineer are all illegal and are required to be quashed and set aside.

15. It is also required to be noted that as stated hereinabove and even as per the affidavit-in-reply of the Corporation dated 22nd January 1998 there were 9 vacancies out of which 6 posts were to be filled up by promotion and 3 posts were to be filled up by direct recruitment, and the advertisement was given inviting applications for preparation of select list plus wait list {In all 6 posts], i.e., for preparing Select List for 3 posts as well as preparing waiting list for 3 posts, and as per the Roster System the posts No. 1 and 2 were to be filled-up from amongst ST candidates while post No. 3 was to be filled-up from SEBC candidates. Inspite of the above, appointments were made on six posts, appointing 5

General category candidates. Now in the further affidavit-in-reply dated 11th August 1998 the Corporation has come out with the case that the said posts of Deputy City Engineer were filled-up by way of promotion as well as by way of direct recruitment in the interests of public administration and public at large. When the interviews were held and the advertisement was issued inviting the applications for filling-up the posts by direct recruit, how the posts of Deputy City Engineer could have been filled up by way of promotion. Thus, it appears that, just a contrary stand has been taken by the Corporation in two different affidavits-in-reply, i.e., one dated 22nd January 1998 and another dated 11th August 1998. It, prima facie, appears to this Court that the subsequent stand has been taken just to get out of the illegalities committed in filling up all the 6 posts and that too out of those posts 5 posts by General category candidates. Thus, the appointments of the private respondents are illegal on this ground also more particularly though other Scheduled

Tribe and SEBC candidates were available who had applied their cases were not considered on the ground that they were not found suitable. When the candidates belonging to ST and SEBC were available, they could not have been denied the appointments on the ground that they were not found suitable. Their cases ought to have been considered based on their merits and on preparation of the select list amongst the said category. Under these circumstances also, the impugned appointments are required to be quashed and set aside.

16. Subsequently, the respondent Corporation has come out with the case that out of the six appointees, one Modi Mukesh Kantilal has sought VRS on 30th September 2002 and another namely Vijay Bapalal Shah has retired on 30th September 2006, and so far as one another appointee, i.e., Mahida Rashmikant Philipbhai is concerned, he is appointed as Additional City Engineer by direct recruitment and as regards remaining 3 appointees, i.e., respondents No. 4, 5 and 6,

they are holding the posts on their appointment as Additional City Engineers by promotion. It is required to be noted that, even the appointments of the aforesaid appointees as Deputy City Engineers were ad-hoc and subject to the ultimate outcome of the present Special Civil Applications. First of all, they could not have been further promoted to the post of Additional City Engineer from the post of Deputy City Engineers. It is also required to be noted that even as per the Resolution dated 15th May 1998 all those appointees were appointed and/or their names were recommended for appointment to the post of Deputy City Engineer on probation period of one year and with a rider that as and when the ST and SEBC candidates are available their services would be terminated. If that is so, then how the aforesaid appointees could have been further promoted to the post of Additional City Engineer from the post of Deputy City Engineer. Thus, as such their further promotions to the post of Additional City Engineer are also illegal.

17. Now, considering the Judgment of the Division Bench of this Court in the case of Dr. R.R. Shah (supra), Shri SN Shelat, learned Senior Advocate appearing on behalf of the Corporation has submitted that if it is found that the Standing Committee was not justified in making recommendations for appointment, in that case the Corporation may be permitted to consider the recommendation of the Municipal Corporation and may be directed to make appointments in accordance with law within specified period and till then the appointments of the private respondents be continued as 'ad-hoc' as they have been occupying the posts since last several years and they are qualified also. It is further submitted that if the respondents are directed to be reverted irrespective of their further consideration by the AMC, the administration will suffer great inconvenience. Now, it is required to be noted that, out of the six appointees, two have already retired and one is already appointed as 'Additional City Engineer' by direct

recruitment. So far as other 3 are concerned, they are holding the post of Additional City Engineer by promotion who as stated above could not have been promoted to the post of Additional City Engineers as their initial appointment as 'Deputy City Engineers' itself is found to be illegal, and even otherwise they were on probation period and by interim order their appointments were directed to be continued as ad-hoc and subject to the result of the present Special Civil Applications. If the submission on behalf of the Corporation is accepted to continue them till a fresh decision is taken by the Corporation, in that case it will be giving a premium to the illegal appointments and would amount to further perpetuating the illegalities when their initial appointments as Deputy City Engineers are found to be illegal. The Corporation has created the situation worst by giving further promotion to them to the post of Additional City Engineer and for that they have to thank themselves. Under the circumstances, the prayer of the Corporation to continue the

appointments of all the respondents as 'ad-hoc' till fresh decision is taken by the Corporation cannot be accepted.

18. For the reasons stated above, all the petitions succeed. The Select List-Wait List prepared by the Commissioner [the Committee consisting of Municipal Commissioner, Deputy Municipal Commissioner (Engineering), City Engineer and Municipal Chief Auditor] on the basis of the interviews conducted on 1st and 2nd September 1997; the Resolution of the Standing Committee being Resolution No. 997 dated 28th October 1997; recommendations made pursuant to the said Resolution; the Resolution of the Standing Committee dated 15th May 1998 and the Select List/Waiting List prepared by the Standing Committee vide the said Resolution dated 15th May 1998 and the consequential appointments made by the Municipal Commissioner/Municipal Corporation on the basis of the recommendations made by the Standing Committee vide its Resolution dated 15th

May 1998 and the consequential appointments of all the private respondents herein as 'Deputy City Engineers' are hereby quashed and set aside. As the appointments of the private respondents as 'Deputy City Engineers' are quashed and set aside, further promotions if any to the post of Additional City Engineer from the post of Deputy City Engineer are also quashed and set aside. The Municipal Commissioner of the Ahmedabad Municipal Corporation is directed to act as per Chapter III and the observations made by the Division Bench of this Court in Judgement delivered in the case of Dr. R.R. Shah (supra), i.e., to prepare a list of candidates in order of preference and to submit the said list to the Corporation, and the Corporation is further directed to consider the said list and to prepare the list in order of merits, i.e., prepare a Select List/Waiting List, and thereafter to make appointments to the post of Deputy City Engineers. The entire exercise be completed within the period of three months from today.

19. With these, all these petitions are allowed to the aforesaid extent. Rule is made absolute in each of the matters to the aforesaid extent with exemplary cost which is quantified at Rs. 5000 per petition as inspite of the decision of the Division Bench of this Court in the case of Dr. R.R. Shah [supra] holding that the Standing Committee has no jurisdiction and/or authority to prepare the Select List and/or the Corporation has no power to delegate the function of making appointment which vests in the Corporation to the Standing Committee, the Select List was recommended by the Standing Committee and on the basis of the same the appointments to the posts of Deputy City Engineers are made by the Commissioner and the Corporation acted contrary to the decision of the Division Bench of this Court in the case of Dr. R.R. Shah (supra) and continue to act illegally.

[M.R. Shah, J.]

RMR.